

FOREIGN CLAIMS SETTLEMENT COMMISSION
OF THE UNITED STATES
WASHINGTON, D.C. 20579

IN THE MATTER OF THE CLAIM OF

RUDOLF WIESEN
TRUDE WIESEN

Under the International Claims Settlement
Act of 1949, as amended

G-0882
Claim No. G-0883

Decision No. G-1781

Appeal and objection from a Proposed Decision entered on January 23, 1980. No Oral Hearing Requested.

Hearing on the Record held on OCT 20 1980

FINAL DECISION

These claims in the amount of 170,000 reichsmarks each against the Government of the German Democratic Republic, under Title VI of the International Claims Settlement Act of 1949, as amended by Public Law 94-542 (90 Stat. 2509), are based upon the loss of improved real property and personalty in Eisenach, as well as income deriving from the realty.

The record indicates that claimants RUDOLF WIESEN and TRUDE WIESEN became United States citizens on June 21, 1937, and August 15, 1952, respectively. The record also indicates that TRUDE WIESEN is the testamentary successor in interest of her husband, Erich Wiesen, who acquired United States citizenship on August 14, 1951 and died in 1972.

By Proposed Decision dated January 23, 1980, claimants were granted an award of \$27,500.00 each based upon the loss of respective one-fourth beneficial ownership interests in the above-described real property as of September 6, 1951. The portions of the claims based upon the asserted loss of personal property and rental income were denied, for the reason that the record failed to establish the existence of such personal property or rent monies,

or to establish that any of the personal property or rent monies were nationalized or otherwise taken by the German Democratic Republic, as required for compensation under the Act.

Claimant RUDOLF WIESEN has objected the findings of the Proposed Decision. His first ground of objection is that the figure of \$110,000.00 determined in the Proposed Decision as the value of the claimed real property in 1951 is too low and should be raised to \$175,000.00. His second ground of objection is that the 6 percent simple interest per annum granted on the awards in the Proposed Decision is inadequate and should also be increased. His third ground of objection is that the awards granted in the Proposed Decision should include awards for rental of the claimed property between 1942 and 1951, based upon the asserted facts that the German Army paid rent of 600 Marks per month for the property during World War II and that a "Democratic Youth Hostel" paid rent of 254 Marks for the property during a period following World War II. Finally, with respect to the personal property claimed for, claimant states that there exists a list prepared by the German Army of these items of property as of 1942, and he apparently contends that, in view of the impossibility of obtaining evidence as to the later taking of this property, it should be presumed that the property, as inventoried in 1942, was also taken in 1951 when the subject real property was taken.

With respect to claimant's first argument, that the subject real property should be held to have had a value of \$175,000.00 in 1951, the Commission notes that the only evidence submitted in support of this contention consists of four additional photographs, together with the unsupported assertion that the City of Eisenach obtained title to the property in 1942 for about ten percent of its value, the "going rate at the time to take over property of that kind." However, these newly-submitted photographs are not materially different from those previously submitted. In addition, the assertion that the city of Eisenach paid only a nominal price for the property in 1942 does not appear to have any relevance to the issue of market value in 1951. On the other hand, the findings

in the Proposed Decision that the property had a value of \$110,000.00 in 1951 was based upon evidence establishing the 1931 appraised replacement value of the property, and a photograph and description of the property. The latter indicated, among other things, that the property consisted of a 3-1/2 story house, two smaller buildings adjacent thereto, and approximately 3.4 acres of land. Furthermore, account was taken of the fact that real property values in Eastern Europe experienced a general increase during the years following World War II.

Having reviewed the record, including the evidence and argument submitted by the claimant, the valuation of the property determined in the Proposed Decision is considered appropriate and reasonable, and an increase in that figure is not considered justified.

With respect to claimant's second argument, concerning the 6 percent simple interest per annum granted on the awards in the Proposed Decision, it is again noted that the interest awards were fixed at this 6 percent figure in accordance with the Commission's decision in Claim of GEORGE L. ROSENBLATT, Claim No. G-0030, Decision No. G-0100 (1978). That decision, in turn, was based on the Commission's holding in Claim of JOHN HEDIO PROACH, Claim No. PO-3097, FCSC Dec. and Ann. 549 (1968), filed against the Government of Poland under Title I of the International Claims Settlement Act of 1949, as amended. In the PROACH decision the Commission noted that the figure of 6 percent had been adopted as a "traditional and customary interest rate" on awards granted for the taking of property in prior international claims programs, and concluded that, "[i]n light of this international law precedent, custom, and tradition, an award of interest at the rate of 6 percent is an "appropriate, equitable, and just measure of compensation." Claimant has submitted no evidence or argument which could serve as a basis for departing from the rule established in the above-cited decisions, and the Commission concludes that application of the rule in the Proposed Decision herein is appropriate and reasonable. The increase in the rate of interest contended for by the claimant is therefore not warranted.

Claimant's third argument is that the award granted in the Proposed Decision should include an amount for lost rent between 1942 and 1951. However, claimant has submitted no evidence, other than his own assertion, that any rent payments were ever made during the period in question. Furthermore, even if it were presumed that such payments were made, no evidence has been submitted to establish that any of the monies comprising the rent payments were nationalized or otherwise taken by the German Democratic Republic, as must be established in order for a claim for their loss to be compensable under the Act.

Finally, claimant contends that awards should also be granted for the loss of his family's furniture, furnishings and other personal property in the house in Eisenach. However, it is again noted that the record is also lacking in evidence as to the existence of this property or which could serve as a basis for a finding that any portion of it was nationalized or otherwise taken by the German Democratic Republic. Although the Commission recognizes the difficulty of procuring such evidence after the passage of such a long period of time, it must nevertheless have a basis for finding that the property was actually subjected to a "nationalization, expropriation or other taking" by the German Democratic Republic, as those terms are used in the Act. It cannot merely be presumed that it was so taken, since it easily could have been moved to another location during World War II and then have been stolen, abandoned, or destroyed shortly before or after the end of the War.

In summary, having reviewed and considered the entire record, including the evidence and argument submitted with claimant's objection, the Commission concludes that a change in the findings of the Proposed Decision in these claims is not warranted.

Accordingly, it is

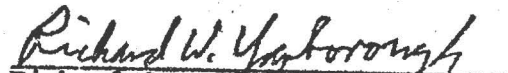
ORDERED that the awards granted in the Proposed Decision be restated below, and that the Proposed Decision in all respects be affirmed.

A W A R D S

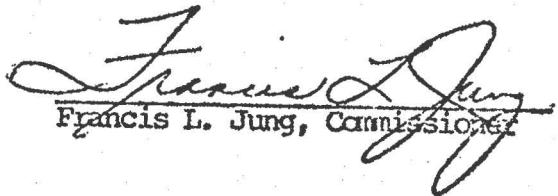
Claimant, RUDOLF WIESEN, is therefore entitled to an award in the amount of Twenty Seven Thousand Five Hundred Dollars (\$27,500.00) plus interest at the rate of 6% simple interest per annum from September 6, 1951 until the date of the conclusion of an agreement for payment of such claims by the German Democratic Republic.

Claimant, TRUDE WIESEN, is therefore entitled to an award in the amount of Twenty Seven Thousand Five Hundred Dollars (\$27,500.00) plus interest at the rate of 6% simple interest per annum from September 6, 1951 until the date of the conclusion of an agreement for payment of such claims by the German Democratic Republic.

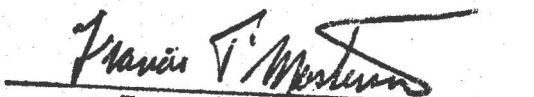
Dated at Washington, DC
and entered as the Final
Decision of the Commission.


Richard W. Yarborough, Chairman

OCT 20 1980


Francis L. Jung, Commissioner

This is a true and correct copy of the decision
of the Commission which was entered as the final
decision on OCT 20 1980


Executive Director

FOREIGN CLAIMS SETTLEMENT COMMISSION
OF THE UNITED STATES
WASHINGTON, D.C. 20579

IN THE MATTER OF THE CLAIM OF

RUDOLF WIESEN
TRUDE WIESEN

Under the International Claims Settlement
Act of 1949, as amended

Claim No. G-0882
G-0883

Decision No. G-1781

Counsel for Claimants:

Erda & Leichter

PROPOSED DECISION

These claims, each in the amount of 170,000 reichsmarks, against the Government of the German Democratic Republic, under Title VI of the International Claims Settlement Act of 1949, as amended by Public Law 94-542 (90 Stat. 2509), are based upon the loss of improved real property and personalty in Eisenach, as well as income deriving from the realty.

The record indicates that claimants, RUDOLF WIESEN and TRUDE WIESEN, became United States citizens on June 21, 1937 and August 15, 1952, respectively. The record also indicates that TRUDE WIESEN is the testamentary successor in interest to her husband, Erich Wiesen, who acquired United States citizenship on August 14, 1951 and died in 1972.

Under section 602, Title VI of the Act the Commission is given jurisdiction as follows:

"The Commission shall receive and determine in accordance with applicable substantive law, including international law, the validity and amounts of claims by nationals of the United States against the German Democratic Republic for losses arising as a result of the nationalization, expropriation, or other taking of (or special measures directed against) property, including any rights or interests therein, owned wholly or partially, directly or indirectly, at the time by nationals of the United States whether such losses occurred in the German Democratic Republic or in East Berlin. . ."

The record establishes that Josef and Else Wiesen, the parents of RUDOLF WIESEN and Erich Wiesen, were the owners before World War II of a villa and several acres of land located at Am Schlossberg 10, in Eisenach. Else Wiesen and Josef Wiesen, both German nationals, died in 1941 and 1942, respectively. Their heirs in equal one-quarter shares were their four children, among whom are the claimant, RUDOLF WIESEN, and Erich Wiesen, the husband and predecessor in interest of claimant, TRUDE WIESEN. The other two children of Else and Josef Wiesen are not United States citizens.

The record in these claims indicates that legal title to the subject property was originally lost during the Nazi regime as a result of racial and religious persecution. The Commission has held in the Claim of MARTHA TACHAU, Claim No. G-0177, Decision No. G-1071, that such persecutory losses will not be considered by the Commission to have cut off all rights of the original owners or their heirs, and that the persecuted owners retained a beneficial interest in the property.

The Commission has also held in the Claim of MARK PRICEMAN, Claim No. G-2116, Decision No. G-1073, that decrees of September 6, 1951, effective in the German Democratic Republic, and December 18, 1951, effective in Berlin, which provided for taking over the administration of foreign owned property, and the decree of July 17, 1952, confiscating or taking under administration property of former residents of the GDR, constituted a governmental program which terminated all rights of restitution of former persecutees or their heirs. The Commission found such a termination of rights to be a taking of the property interests of such persons; and, where the property interests were owned by United States nationals at the time of loss, the termination of rights would form the basis of a compensable claim. The Commission finds, therefore, that the beneficial interests of RUDOLF WIESEN and Erich Wiesen in the real property involved herein were taken as of September 6, 1951.

No evidence has been submitted, however, as to the identity and value of the personal property in the premises that was also originally lost during the Nazi era. Nor does the record establish that any such personalty was still on hand after World War II or in any manner the subject of a loss "arising as a result of the nationalization, expropriation or other taking" by the German Democratic Republic, as required by section 602 of Title VI of the Act. This part of the claims, therefore, must be denied.

In determining the value of the real property involved herein, the Commission has considered such evidence as a 1931 appraisal, a photograph, and the claimants' description of the property. The record establishes that the property included a 3 1/2 story house, two smaller buildings adjacent thereto, and about 3.4 acres of land. Based upon all the evidence, the Commission determines that the improved real property had a value of \$110,000.00 in 1951. For their respective one-quarter interests therein, each of the claimants is entitled to an award of \$27,500.00.

Claim is also made for lost rental income. The record contains no evidence, however, that any rental income was collected following the original loss of the property during the Nazi era, or that such rental income, whether as cash, a bank account, or in any other form, was taken by the German Democratic Republic at the time the beneficial interests in the real property were terminated in 1951. The claimants would have no ownership interest in any rental income earned after 1951, since their beneficial interests in the real property were terminated at that time. This part of the claims, therefore, must be denied.

The Commission has concluded, however, that in granting awards on claims under section 602 of Title VI of the Act, for the nationalization or other taking of property or interests therein, interest shall be allowed at the rate of 6% per annum from the date of loss to the date of settlement. (Claim of GEORGE L. ROSENBLATT, Claim No. G-0030, Decision No. G-0100 (1978)).

A W A R D S

Claimant, RUDOLF WIESEN, is therefore entitled to an award in the amount of Twenty-Seven Thousand Five Hundred Dollars (\$27,500.00), plus interest at the rate of 6% simple interest per annum from September 6, 1951 until the date of the conclusion of an agreement for payment of such claims by the German Democratic Republic.

Claimant, TRUDE WIESEN, is therefore entitled to an award in the amount of Twenty-Seven Thousand Five Hundred Dollars (\$27,500.00), plus interest at the rate of 6% simple interest per annum from September 6, 1951 until the date of the conclusion of an agreement for payment of such claims by the German Democratic Republic.

Dated at Washington, D.C.
and entered as the Proposed
Decision of the Commission.

JAN 23 1980

For Presentation to the Commission



by David H. Rogers, Director
German Democratic Republic Claims
Division

NOTICE: Pursuant to the Regulations of the Commission, if no objections are filed within 15 days after service or receipt of notice of this Proposed Decision, a Final Decision based upon the Proposed Decision will be issued upon approval by the Commission any time after the expiration of the 30 day period following such service or receipt of notice. (FCSC Reg., 45 C.F.R. 531.5 (e) and (g), as amended.)

At any time after Final Decision has been issued on a claim, or a Proposed Decision has become the Final Decision on a claim, but not later than 60 days before the completion date of the Commission's affairs in connection with this program, a petition to reopen on the ground of newly discovered evidence may be filed. (FCSC Reg., 45 C.F.R. 531.5 (1), as amended.)

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